

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**E.R., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Buffalo, NY, Employer**

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**Docket No. 17-0263  
Issued: April 7, 2017**

*Appearances:*

*Paul Kalker, Esq., for the appellant<sup>1</sup>*

*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

CHRISTOPHER J. GODFREY, Chief Judge

ALEC J. KOROMILAS, Alternate Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On November 15, 2016 appellant, through counsel, filed a timely appeal from an October 19, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.

**ISSUE**

The issue is whether appellant has met her burden of proof to establish an injury causally related to factors of her federal employment.

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<sup>1</sup> In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; see also 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

On appeal counsel contended that appellant's attending physician established her occupational disease claim through his June 18, 2016 report.

### **FACTUAL HISTORY**

On July 6, 2016 appellant, then a 50-year-old window clerk filed an occupational disease claim (Form CA-2) alleging that she developed a series of conditions, including lumbar herniated discs, lumbar degenerative disc disease, lumbar spinal stenosis, and spondylolisthesis. She also alleged thoracic disc protrusion, spondylosis, and arteriolisthesis as well as cervical spondylosis, and neuroforaminal narrowing. Appellant asserted that she developed bilateral rotator cuff tears and impingement, right shoulder bicipital tendinitis, right shoulder tears and osteodegenerative changes, as well as left shoulder osteodegenerative changes at the acromioclavicular (AC) joint. She attributed these conditions to 20 years of repetitive duties as a mail distributor or window clerk including repeated lifting, pushing, and pulling heavy mail. Appellant noted that she was also required to twist and bend to lift and process mail eight hours a day, five days a week. She first became aware of her conditions on March 11, 2016 and first attributed the conditions to her federal employment on that same date.

Dr. Ira J. Sutton, a Board-certified family practitioner, provided a summary of appellant's office visits beginning March 19, 2015. On March 19, 2015 he diagnosed sacroiliac joint strain due to rotation of her back at work. Dr. Sutton noted on April 7, 2015 that appellant reported a back injury occurring on March 18, 2015 while lifting mail trays and boxes. He diagnosed persistent low back pain. On June 17, 2015 appellant developed increased right low back pain with radiation to her groin after sitting on the floor. She underwent a magnetic resonance imaging (MRI) scan which Dr. Sutton found demonstrated multilevel disc disease on June 8, 2015. On December 14, 2015 appellant reported shoulder pain, right low back pain, and knee pain which she attributed to standing and sorting letters at work. Dr. Sutton provided appellant with light-duty work restrictions on March 16, 2016 due to persistent back and shoulder pain. He listed appellant's diagnostic testing including a 2008 MRI scan which demonstrated left shoulder impingement with rotator cuff tear. A June 26, 2015 MRI scan showed herniated lumbar disc with osteodegenerative changes. Appellant underwent a right shoulder MRI scan on June 8, 2016 which demonstrated a partial tear of the supraspinatus tendon at insertion on the humeral head as well as a possible degenerative tear of the superior labrum.

Dr. Sutton diagnosed lumbosacral degenerative disc disease with radiculopathy, bilateral shoulder rotator cuff injuries, bilateral knee osteoarthritis, and chronic asthma. He opined that appellant had developed multiple orthopedic conditions related to her employment and had failed to respond sufficiently to return to work. Dr. Sutton concluded:

“Due to the progressive nature of her back and shoulder injuries, she is no longer able to perform any of the tasks required of her position, including lifting, reaching, pushing, and pulling. Her back injury is permanent, and will not improve, the right shoulder may show some temporary improvement; however, the degenerative changes will be progressive. The arthritic conditions of the spine and shoulders are irreversible and will continue indefinitely.”

Dr. Yasmin Dhar, a Board-certified orthopedic surgeon, examined appellant on June 20, 2016 due to her right shoulder pain. She noted that appellant's shoulder pain began in 2008 and was not due to any specific injury. Dr. Dhar found tenderness in the bicipital groove, well as pain and weakness with supraspinatus testing. She reviewed appellant's June 8, 2016 MRI scan and found a labral tear with tendinopathy of the biceps and tendinosis of the supraspinatus. Dr. Dhar diagnosed sprain of the right rotator cuff capsule and bicipital tendinitis of the right shoulder. She recommended right shoulder arthroscopy with decompression and likely an open biceps tenodesis.

Appellant had a cervical MRI scan on June 21, 2016 which demonstrated multilevel spondylosis with neuroforaminal narrowing. On June 22, 2016 she had a left shoulder MRI scan which showed osteodegenerative changes at the AC joint and partial tear of the supraspinatus tendon. A July 1, 2016 thoracic MRI scan revealed a T9-10 moderate right disc protrusion. On July 2, 2016 appellant underwent a lumbar MRI scan which demonstrated multilevel degenerative disc bulges, degenerative spondylosis, mild spinal stenosis at L3-4, and spondylolisthesis of L3 on L4.

In a letter dated September 9, 2016, OWCP listed the evidence received and requested additional medical evidence substantiating that the diagnosed conditions were caused or aggravated by appellant's work. It afforded her 30 days for a response.

On September 25, 2016 counsel resubmitted Dr. Sutton's three-page summary of her medical treatment beginning on March 19, 2015. In a letter dated September 29, 2016, he contended that Dr. Sutton's report was sufficient to establish appellant's occupational disease claim.

By decision dated October 19, 2016, OWCP denied appellant's occupational disease claim. It found that the medical evidence of record was insufficient to establish a causal relationship between appellant's diagnosed condition and her accepted employment duties. OWCP noted that the medical evidence did not contain medical reasoning.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</sup> has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence, including the fact that the individual is an "employee of the United States" within the meaning of FECA and that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.<sup>4</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the

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<sup>3</sup> *Supra* note 2.

<sup>4</sup> *Kathryn Haggerty*, 45 ECAB 383, 388 (1994).

presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.

The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete factual and medical background, showing a causal relationship between the claimed condition and identified factors. The belief of a claimant that a condition was caused or aggravated by the employment is insufficient to establish causal relation.<sup>5</sup>

### **ANALYSIS**

The Board finds that appellant has not met her burden of proof to establish an injury causally related to the accepted factors of her federal employment.

In support of her occupational disease claim, appellant described her employment duties including twisting, bending, lifting, pushing, and pulling heavy mail. She also submitted medical evidence diagnosing specific conditions. Dr. Dhar diagnosed sprain of the right rotator cuff capsule and bicipital tendinitis of the right shoulder. Dr. Sutton diagnosed lumbosacral degenerative disc disease with radiculopathy, bilateral shoulder rotator cuff injuries, and bilateral knee osteoarthritis.

The Board finds that the medical evidence of record is insufficient to establish a causal relationship between appellant's diagnosed conditions and her accepted employment duties. Dr. Dhar did not provide an opinion expressing whether or not appellant's right shoulder condition was due to her specified employment duties.<sup>6</sup> Her report is therefore insufficient to meet appellant's burden of proof to establish an occupational disease claim.

Dr. Sutton opined that appellant had developed multiple orthopedic conditions related to her employment, but he did not provide a detailed account of the specific employment duties which he believed caused her diagnosed conditions of lumbosacral degenerative disc disease with radiculopathy, bilateral shoulder rotator cuff injuries, and bilateral knee osteoarthritis. Without a complete factual background, his report is insufficient to establish an occupational disease claim for those diagnosed conditions.<sup>7</sup>

Dr. Sutton described four specific employment injuries. He noted on March 19, 2015 that appellant developed sacroiliac joint strain due to rotation of her back at work. Dr. Sutton also reported on April 7, 2015 that appellant reported a back injury occurring on March 18, 2015 while lifting mail trays and boxes resulting in persistent low back pain. He noted that on

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<sup>5</sup> *Lourdes Harris*, 45 ECAB 545, 547 (1994).

<sup>6</sup> See *Y.D.*, Docket No. 16-1896 (issued February 10, 2017); see also *D.R.*, Docket No. 16-0528 (issued August 24, 2016).

<sup>7</sup> See *supra* note 5.

June 17, 2015 appellant developed increased right low back pain with radiation to her groin after sitting on the floor. On December 14, 2015 appellant reported shoulder pain, right low back pain, and knee pain which she attributed to standing and sorting letters at work. With regard to three of these four claimed work-related injuries, Dr. Sutton did not provide a diagnosed medical condition. The Board has held that the mere diagnosis of “pain” does not constitute the basis for payment of compensation.<sup>8</sup> Therefore, Dr. Sutton’s report cannot establish an occupational injury as a result of these activities resulting in low back pain, shoulder pain and knee pain.

While Dr. Sutton diagnosed a sacroiliac joint strain due to rotation of her back at work, he did not explain whether this strain developed over a period of time or was the result of the activities of one workday. He also failed to provide medical reasoning explaining how and why appellant’s joint strain developed due to her employment activities. Without medical rationale, Dr. Sutton’s report is insufficient to establish an occupational disease claim for the diagnosed condition of sacroiliac joint strain.<sup>9</sup>

On appeal, and before OWCP, counsel contended that Dr. Sutton’s statements regarding appellant’s disability for work and the ongoing deterioration of her conditions was sufficient to establish her occupational disease claim. The Board finds the opinion of Dr. Sutton to be insufficient to establish appellant’s claim for an occupational disease.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant failed to establish an occupational disease causally related to factors of her federal employment.

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<sup>8</sup> *Robert Broome*, 55 ECAB 339 (2004).

<sup>9</sup> *See supra* note 5.

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 19, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 7, 2017  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board